IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.RAMACHANDRAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

RFA.No. 379 of 2006()

OS.683/2004 of PRL.SUB COURT,TRIVANDRUM
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: APPELLANTS/DEFENDANTS
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1. SUMA SIVAKUMAR, W/O.LATE SIVAKUMAR,
T.C.27/246, THAMPURAN MUKKU,
KUNNUKUZHI P.O., THIRUVANANTHAPURAM.

2. S.S.SHYLA ANAND,(MINOR),
D/O.LATE SIVAKUMAR, T.C.27/246,
THAMPURAN MUKKU, KUNNUKUZHI P.O.,
THIRUVANANTHAPURAM.

3. S.S.SABARI ANAND, (MINOR),
S/O.LATE SIVAKUMAR, T.C.27/246, THAMPURAN MUKKU,
KUNNUKUZHI P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.B.SATHIQ
SRI.C.ANIRUDHAN

RESPONDENTS: PLAINTIFFS
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1. ANANDAVALLY, W/O.KUNJUKRISHAN,
"ANANDAKRISHNALAYAM" T.C.27/246,
KUNNUKUZHI P.O., THIRUVANANTHAPURAM.

2. KUNJUKRISHNAN, S/O.NEELAKANTAN,
"ANANDAKRISHNALAYAM" T.C.27/246,
KUNNUKUZHI P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M. RAMACHANDRAN & A.K. BASHEER, JJ.

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R.F.A.NO.379 OF 2006

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DATED THIS THE 7TH DAY OF DECEMBER, 2006.

JUDGMENT

Basheer, J.

The defendants in a suit for partition have filed this appeal challenging the preliminary decree and judgment passed by the court below to the extent it directs the Advocate Commissioner to be appointed in the final decree proceedings, to "consider the amended written statement and supervise the possibility of the first defendant purchasing the 1/4th share of the first plaintiff." It is contended by the learned counsel for the appellants that the court below has traversed far beyond its jurisdiction while issuing the above direction.

2. It appears that during the pendency of the suit, the defendants had offered to purchase the 1/4th share of the first plaintiff in the plaint schedule properties apprehending that she was likely to alienate her undivided share in the properties. The above offer was accepted by the first plaintiff. However, it was contended that the market value of the property has to be ascertained and then only the property can be offered for sale. But, the defendants contended that the 1/4th share should be sold by the first plaintiff at the value shown in the plaint. It is in the above premise that the court below had directed that the Advocate Commissioner shall consider the amended written statement in which the defendants had made the offer mentioned above.

3. When this appeal came up for admission, we have heard learned counsel for the respondents/plaintiffs also. Learned counsel submits that respondent No.1 is prepared to sell her 1/4th share in the plaint schedule properties at the market value to be determined by the Advocate Commissioner in the final decree proceedings. It is further contended by the learned counsel that the life interest in respect of plaint A schedule property reserved in favour of the plaintiffs shall also have to be kept in view when the valuation is being made. These are all matters which have to be worked out in the final decree proceedings.

We dispose of this appeal recording the submission made by the learned counsel for the respondents that respondents are prepared to sell the undivided 1/4th share of plaintiff No.1 in plaint A and B schedule properties. It is made clear that if the appellants resile from their offer at a later stage and do not purchase the share as stated by them now, it will be open to respondent No.1 to sell her 1/4th share to a willing purchaser.

(M.Ramachandran, Judge.)

(A.K. Basheer, Judge.)

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